IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1905 OF 2005.
IN
SECOND APPEAL NO.1342 OF 2005.

Sharad Ramchandra Phadke. ... Appellant.
Versus.
Bhagwanlal Durgaram Kandi
since deceased by his LRs.
1 Smt.Leelavati Bhagwanlal Kandi
and others. ... Respondents.

Shri S.G.Deshmukh for the Appellant.

Shri A.M.Kulkarni for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 17th April, 2006.

P.C.:

1. Rule. Shri Kulkarni waives service. Taken up for hearing forthwith.

2. The prayer in this application is for stay of execution and operation of the impugned judgment and decree. Clause 4 of the operative part of the decree grants declaration and clause 5 directs demolition of the wall constructed by the Applicant. In my view operation of clause 4 cannot be stayed and the Applicant will be sufficiently protected if operation of clause 5 of the operative part of the decree is stayed.

3. Accordingly the following order is passed:

"Till final disposal of the Second Appeal, execution and operation of clause 5 of the operative part of the impugned Judgment and Decree will remain stayed. There will be no order as to costs."

Judge.